

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

BOARD OF TRUSTEES OF THE BAY  
AREA ROOFERS HEALTH & WELFARE  
TRUST FUND, PACIFIC COAST  
ROOFERS PENSION PLAN, EAST  
BAY/NORTH BAY ROOFERS  
VACATION TRUST FUND, BAY AREA  
COUNTIES ROOFING INDUSTRY  
PROMOTION FUND, BAY AREA  
COUNTIES ROOFING INDUSTRY  
APPRENTICESHIP TRAINING FUND;  
BRUCE LAU, TRUSTEE,

Plaintiff,

v.

NORTH BAY WATERPROOFING, INC., a  
California corporation;

Defendant.

Case No. 12-cv-02374 NC

**ORDER RE: HEARING ON MOTION  
FOR DEFAULT JUDGMENT**

Re: Dkt. No. 26

Pending before the Court is plaintiffs' motion for default judgment against North Bay Waterproofing, Inc. seeking an order compelling North Bay to comply with an audit of its payroll records for the period of April 1, 2011 to the present. Dkt. No. 26. A hearing on the motion is scheduled for July 31, 2013 at 1:00 p.m. in Courtroom A, 15th Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

The Court notes that plaintiffs' complaint alleges North Bay breached a collective

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1 bargaining agreement with Local 40 of the United Union of Roofers, Waterproofers and  
2 Allied Workers by refusing to permit an audit. Dkt. No. 1 at 3. Plaintiffs' motion,  
3 however, seeks relief with respect to the alleged breach of the agreement with Local 40, and  
4 with respect to a breach of an additional collective bargaining agreement with Local 81 of  
5 the United Union of Roofers, Waterproofers and Allied Workers. *See* Dkt. No. 26 at 3-4.  
6 At the hearing, plaintiffs should be prepared to address (1) why the Court should grant relief  
7 with respect to the collective bargaining agreement with Local 81 which has not been  
8 alleged in the complaint, *see* Fed. R. Civ. P. 54(c) ("[a] default judgment must not differ in  
9 kind from, or exceed in amount, what is demanded in the pleadings"); *see also, e.g., Bob*  
10 *Tragni, et al. v. Souther Electric Inc.*, No. 09-cv-32 JF (RS), 2009 WL 3052635, \*2-3 (N.D.  
11 Cal. Sept. 22, 2009) (denying default judgment with respect to relief not alleged in the  
12 complaint); and (2) why North Bay should be required to submit to an audit covering the  
13 time period of April 1, 2011 through the present where the collective bargaining agreements  
14 provided appear to have an effective date of August 1, 2011. *See* Dkt. No. 26-3 ¶¶ 2, 4.

15 The plaintiffs must serve North Bay with this order in a manner to ensure notice.

16 IT IS SO ORDERED.

17 Date: July 26, 2013



18 Nathanael M. Cousins  
19 United States Magistrate Judge  
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